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**LD 366 - Ought Not To Pass**

**An Act to Ensure Compliance with Federal Immigration Law by State and Local Government Entities**

JOINT STANDING COMMITTEE ON THE JUDICIARY

April 20, 2017

Greetings Senator Keim, Representative Moonen, and members of the Judiciary Committee. My name is Oami Amarasingham and I am the Advocacy Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the United States and Maine Constitutions through advocacy, education, and litigation. On behalf of our members, we ask you to reject LD 366, which would lead to violations of the Fourth and Fourteenth Amendment, violates the Separation of Powers, and undermines Tenth Amendment principles.

Fourth and Fourteenth Amendments

Section 25003(4), would require local governments to violate a person's Fourth Amendment rights. Maine law enforcement officers cannot arrest someone merely because someone else asks them to – even if that someone is the federal government. Local jurisdictions that participate in immigration enforcement often end up in court, and some have been held liable for constitutional violations. Local police acting upon ICE detainer requests have faced liability for unlawful detentions in violation of the Fourth Amendment and Due Process Clause. They have also been sanctioned by courts for violating prohibitions against racial profiling.

LD 366 puts Maine towns and cities in an impossible position – exposing them to liability from all sides. Compliance with the bill will result in lawsuits by Mainers whose constitutional rights have been violated. Noncompliance with the bill will result in loss of all state funding, as well as potential lawsuits from residents anywhere in the state of Maine.

Separation of Powers

Sections 25004(2) and (3) present separation of powers problems. The duty of the Attorney General is to enforce the laws as written by the legislature, but the manner in which she carries out her duties are defined by the Constitution and characterized by independence. This bill would require the Attorney General to devote precious resources to investigating even frivolous claims. Furthermore, it gives the Attorney General the extraordinary power to issue an opinion that results in the loss of all state funding to a municipality – from schools, to roads, to jails, to police and everything in between. Practically speaking, the Attorney General would have the authority to short circuit the budgetary process, denying funding allocated to towns and cities by the Legislature and the Executive.

### Local Control

LD 366 would require state and local law enforcement agencies to adopt federal immigration priorities, completely terminating local law enforcement leaders' ability to set local priorities that differ from those of federal immigration policy. Section 25003(3) of the bill, which requires state and local government entities to actively "support the enforcement of federal immigration law," upsets the balance of state and federal power protected by the Tenth Amendment as recognized in Printz v. United States.<sup>1</sup> In Printz, Justice Scalia explained, "the Framers rejected the concept of a central government that would act upon and through the States... The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens."<sup>2</sup> LD 366 makes local governments accountable not to their citizens but to the federal Department of Homeland Security. In fact LD 366 would punish state and local agencies that prioritize the public safety needs of Mainers over federal policy. The Tenth Amendment prohibits the federal government from commandeering state officers, but with LD 366, the sponsor asks Maine to voluntarily cede control of law enforcement to the Department of Homeland Security. And while this bill will make our officers accountable to the federal government, the federal government will not in turn provide our officers with support or oversight. In a recent Department of Justice memo, Attorney General Jeff Sessions wrote, "Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies."<sup>3</sup>

### Other Problems

Finally, we draw the committee's attention to sections of the bill that are not designed to address Maine needs. Section 25003(3) and (5) together would mean that local police could find themselves transporting people on ICE's behalf at their own expense 100 percent of the time. Section 25003(5) refers to transfer to a federal facility in this state – such a facility does not exist. Section 25004 could put local governments in a position where they are targeted by lawmakers and residents from any part of the state. Section 25005 requires that Maine courts prioritize cases brought under the bill, which will inevitably slow access to justice in all other cases. Section 25005 and 25006 together will clog our courts with frivolous lawsuits. Section 25008 purports to promise that nobody will be profiled or discriminated against, but it is a mere fig leaf and an inadequate one at that. It does not hide what this bill is really about, which is the mobilization of our state's already overburdened police forces to act as foot soldiers in the President's deportation army.

Please reject LD 366.

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<sup>1</sup> 521 U.S. 898 (1997).

<sup>2</sup> *Id.* at 920.

<sup>3</sup> Memorandum from Attorney Gen. Jefferson B. Sessions to Heads of Department Components and United States Attorneys (March 31, 2017) (available at <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>).